

DEFINITIONS

Aggravating Circumstances: Facts that indicate a greater level of discipline is appropriate.

At-will Employees: Those employees who do not have rights to due process prior to removal from employment nor complaint procedures available to challenge disciplinary actions.

Counseling: A discussion with an employee concerning an event which is significant enough to require documentation. A counseling is not discipline, but may serve as notice that failure to correct the performance or repetition of the misconduct may result in disciplinary action. Counselings should be filed in a supervisor's fact file pending completion of the next performance appraisal report.

Demotion: A demotion can be a disciplinary action. Disciplinary demotions will change an employee from his/her current classification to a classification with a lower maximum salary rate as defined in 31 IAC 2-1-1(u) and 31 IAC 1-1-1. Demotions may be imposed for incidents of misconduct which indicate the employee is unfit for his/her current level of responsibility or authority, but can still be effective in a lower level position.

Dismissal: A dismissal terminates employment. It is used where the employee's actions were thought to be conducive to rehabilitation, but corrective measures have not achieved conformance with established standards of performance or conduct. Dismissal may be the first disciplinary action taken in those instances where the actions of the employee make continued employment in state government unacceptable.

Mitigating Circumstances: Facts that indicate a lesser level of discipline is appropriate.

Non-merit Employee with complaint rights under EO 05-14: An employee of the non-merit service, as defined in 31 IAC 1-1-1, who: (1) does not have standing to file a complaint under a statute or rule, (2) has at least six months of continuous full-time or twelve months of continuous part-time employment, (3) is not classified in the ESM or SAM/PAT job categories, and (4) is not employed on a temporary or intermittent basis.

Pre-deprivation process: Prior to imposing a suspension, demotion, or dismissal, the State must provide a regular employee in the merit service, or a non-merit employee who has complaint rights pursuant to Executive Order 05-14, with notice of the nature of the charges and evidence and an opportunity to respond to the allegations.

Reasonable Suspicion: Observations that an employee manifests physical, behavioral, speech or performance symptoms or reactions commonly attributed to the use of controlled substances or alcohol.

Regular Employee: An employee in the merit service who met the minimum qualifications, passed the examination, completed the working test period, and has been certified by the appointing authority for the specific classification.

Reprimand: A reprimand is a written disciplinary action used to provide notice of the need to alter conduct.

Reprimand in lieu of Suspension: A reprimand in lieu of a suspension without pay is a written disciplinary action that carries the same weight or consequence as a suspension but does not remove the employee from the work place or deprive an employee of salary. It is used in situations where it is in the State's best interest, for example, when the cause for the discipline is related to attendance or punctuality.

Suspension: A suspension is a written disciplinary action that removes an employee from the work place (and deprives an employee of salary) for a definite period of time, not to exceed thirty (30) calendar days. It is used to illustrate that continued employment is in jeopardy.

RESPONSIBILITIES

Employees are responsible for:

- performing their duties and conducting themselves in a professional, respectful, effective, and efficient manner; and
- cooperating in any administrative investigations into allegations of misconduct.

Supervisors are responsible for:

- consistently implementing and enforcing all workplace rules and standardized policies;
- monitoring the performance and behavior of subordinates;
- conducting or cooperating in any administrative investigations into allegations of misconduct;
- recommending or imposing discipline in accordance with laws, rules, and policies; and
- recommending predeprivation proceedings to the appointing authority or designee or conducting predeprivation proceedings (if this authority is delegated to the supervisor by the appointing authority) in accordance with laws, rules, and policies.

PROCEDURES

The State shall impose discipline in a timely manner consistent with the following guidelines.

1. Regular employees in the merit service are entitled to predeprivation proceedings prior to the imposition of a suspension, demotion, or dismissal. Such proceedings include (1) notice of the charges/allegations against the employee, (2) a brief

explanation of the evidence being considered as the basis of possible disciplinary action, and (3) an opportunity for the employee to respond to those allegations before a decision on disciplinary action is made. There are no requirements for a specific amount of notice in advance of the predeprivation meeting. Employees may have a fellow employee present as a witness at a predeprivation meeting. If the employee is unavailable for an in-person meeting, predeprivation proceedings can be conducted by telephone or in writing.

2. Non-merit employees who have complaint rights pursuant to Executive Order 05-14 should also receive predeprivation proceedings pursuant to the procedure outlined in Paragraph #1 of this section.

3. Aggravating and/or mitigating circumstances can influence the appropriate action for incidents of misconduct. When an employee has received prior discipline, the appropriate discipline is generally the next higher level consequence. Reprimand is the lowest disciplinary consequence and dismissal is the strongest disciplinary consequence. Suspension and demotion fall between reprimand and dismissal.

4. If an employee commits multiple acts of misconduct, the State shall use its discretion in determining the appropriate level of discipline.

5. Employees should be told of the specifics of their misconduct and may be given an opportunity for correction where the behavior of the employee can reasonably be expected to be corrected. Employees shall be advised that further misconduct may result in disciplinary action up to and including dismissal.

6. Upon reasonable suspicion, employees may be required to submit to controlled substance and/or alcohol testing.

7. All investigations and disciplinary actions must be consistent with applicable administrative policies, rules, and statutes.

8. An emergency suspension may be imposed where the continued presence of the employee is a disruption or interferes with an investigation or other operational need. Should the investigation result in a finding that the employee has not committed misconduct, s/he shall be reinstated with back-pay for any salary lost during the emergency suspension. Should such emergency suspension extend beyond thirty (30) calendar days, approval of the State Personnel Director is required in accordance with 31 IAC 2-12-2(b) or 31 IAC 1-10-2(b) and paragraph #9 below.

9. With the approval of the State Personnel Director, an employee may be suspended without pay for longer than thirty (30) calendar days pending the results of an internal and/or external investigation or disposition of charges. If misconduct which warrants discipline is not substantiated by that investigation or disposition of the charges is favorable to the employee, the employee shall be reinstated with full back

pay and benefits, less any wages he/she may have earned during the suspension period.

10. The State reserves the right to impose a reprimand in lieu of a suspension. The action shall be considered the equivalent consequence to a suspension without pay and is appropriate.

11. Overtime-exempt employees may only be suspended in increments of one (1) or more full calendar weeks.

12. Employees shall not be suspended from duty with pay.

13. All discipline shall be documented with a copy provided to the employee, and a copy placed in the employee's personnel and fact files. Copies of all suspensions, demotions, and dismissals shall be forwarded to the State Personnel Department as attachments to the appropriately completed personnel/payroll action form.

14. Problems in job performance resulting from an inability to perform, and not related to misconduct, should be addressed through the performance appraisal process. Problems in job performance resulting from an apparent unwillingness to perform or related to misconduct should be addressed through progressive discipline.

REFERENCES

IC 4-15-2-33
IC 4-15-2-34
31 IAC 1-10
31 IAC 2-12
Executive Order 90-5
Executive Order 05-14